Such a law cannot be sustained under the police power. It has no legitimate tendency to promote the public peace, health or welfare. It is also an unwarrantable interference with the right of contract, and with that liberty which is secured by state and national constitutional provisions. *State* v. *Julow*, (1895), 129 Mo. 163, 31 S. W. 781, 29 L. R. A. 257, 50 Am. St. Rep. 443; *Gillespie* v. *People*, (1900), 188 Ill. 176, 58 N. E. 1007, 52 L. R. A. 283, 80 Am. St. Rep. 176. Said the court:—

"The nearest parallel we have found to the act in question are laws enacted in Missouri and Illinois, nearly identical with our law as it existed before the amendment of 1899, namely, making criminal attempts to coerce employes against membership in labor unions, by discharge or otherwise. In *State* v. *Julow*, supra, such law was held unconstitutional, as unduly invading the liberty of the employer to make or refuse to make contracts with whom he pleased. In that case the act committed was merely discharging an employee, and it was contended that it was prohibited by the law. The court said: 'If an owner,' etc., 'obeys the law on which this prosecution rests, he is thereby deprived of a right and liberty to contract or terminate a contract as all others may. * * * We deny the power of the legislature to do this; to brand as an offense that which the constitution designates and declares to be a right, and therefore an innocent act.' And further: 'Nor can the statute escape censure by assuming the label of a police regulation. It has none of the elements or attributes which pertain to such a regulation, for it does not, in terms or by implication, promote, or tend to promote, the public health, welfare, comfort, or safety; and, if it did, the state would not be allowed, under the guise and pretense of police regulation, to encroach or trample upon any of the just rights of the citizen, which the Constitution intended to secure against diminution or abridgment.' In *Gillespie* v. *People*, supra, was considered a similar act, claimed to be breached by discharging an employee because he was a member of a certain labor organization. That court also held the act unconstitutional, adopting substantially the views of the Missouri court in the preceding case. The court said: "One citizen cannot be compelled to give employment to another citizen, nor can any one be compelled to be employed against his will. The act * * * now under consideration deprives the employer of the right to terminate his contract with his employee. The right to terminate such a contract is guaranteed by the organic law of the state. The legislature is forbidden to deprive the employer or employee of the exercise of that right. The legislature has no authority to pronounce the performance of an innocent act criminal, when the public health, safety, comfort, or welfare is not interfered with.' 'Liberty includes not only the right to labor, but to refuse to labor, and consequently the right to contract to labor, or for labor, and to terminate such contracts, and to refuse to make such contracts.' "

CONTRACT—PERFORMANCE TO THE SATISFACTION OF THE PROMISEE.—A contract was made for the erection by a contractor of a municipal building according to plans and specifications agreed upon. The contract provided that no part of the work should be accepted unless it complied in all respects with the specifications. It also provided that the board of public works of the city should be the final judge of the performance. The board having decided that the contractor had not performed in accordance with the contract, he brought an action against the city to recover. *Held*, that the board could not arbitrarily determine the question of performance in such wise as to prevent the court from passing upon the matter of a substantial performance by the contractor and the acceptance of it by the city. *Schliess* v. *Grand Rapids*, (1902), — Mich. —, 90 N. W. Rep. 700.

The court distinguished previous cases in the same court on the ground that they either involved questions of mere feeling, taste or sensibility, like *Gibson* v. *Cranage*, 39 Mich. 49, 33 Am. Rep. 351; or provided for no standard of performance except the mere determination of

the promisee. In none of them were there, as here, plans and specifications to be complied with, of which compliance others could judge as well as the promisee. The case was likened to *Richison* v. *Mead*, 11 S. Dak. 639, 80 N. W. 131. See MECHEM ON SALE, §§663, et seq.

DAMAGES—SALE—DUTY TO MINIMIZE LOSS.—An action was brought to recover for the price of coal sold. Defendant by way of counter-claim showed that plaintiff, after agreeing to deliver coal on sixty days' credit, had wilfully refused to deliver any more on credit, and defendant sought to be allowed the difference between the contract price and the market price, which was considerably higher. To defeat the counter-claim, the plaintiff offered to show that some thirty days after refusing to supply the coal on credit, it had offered to supply it for cash at less than the contract price, the reduction being equal to interest upon the contract price for sixty days. *Held*, that such offer did not defeat the counter-claim. *Coxe* v. *Anoka Waterworks, etc., Co.* (1902), — Minn. — , 91 N. W. Rep. 265.

A substantially contrary result was reached in *Lawrence* v. *Porter*, 63 Fed. Rep. 62, 11 C. C. A. 27, 26 L. R. A. 167, Mechem's Cases on Damages, 326, where it was held that the buyer's duty to minimize his loss required him to buy for cash of the defaulting seller rather than to buy for a higher price of other parties. Reliance was there placed upon *Warren* v. *Stoddart*, 105 U. S. 224. The Minnesota court repudiates *Lawrence* v. *Porter*, because "it entirely abrogates the contract as made by the parties, and forces upon them another and wholly different one, made by the court. It enables one of the parties to escape a proper liability for a deliberate and indefensible violation of a bargain he had made, and allows a court to arbitrarily say that the value of a certain specified period of credit to a vendee is simply the interest he might have to pay to secure cash to take the place of the credit he has bargained for." Notwithstanding this criticism, however, the doctrine of *Lawrence* v. *Porter*, is well supported by many analogies in the law. See MECHEM ON SALES, § 1754, 1755 and notes.

MANDAMUS—JURISDICTION TO ISSUE WRIT AGAINST THE GOVERNOR.—A state statute declared that, immediately upon its going into effect, "the governor shall appoint" a board of commissioners. The validity of the act was established, but the governor refused to make the appointment. *Held*, that the court had jurisdiction to issue mandamus to compel the appointment. *State* v. *Savage*, (1902), — Neb. — , 90 N. W. Rep. 898.

The power to issue the writ of mandamus against the governor of a state has been much discussed and frequently adjudicated. (See MECHEM ON PUB. OFF. §§ 954-956.) It is everywhere conceded that no such jurisdiction exists where the performance of the act is one resting in his discretion, but where a plain duty of a ministerial nature is positively imposed upon the governor by law, it is held by many courts that the writ should issue. Among these courts, is the supreme court of Nebraska. *State* v. *Savage*, supra; *State* v. *Thayer*, 31 Neb. 82. The cases upon this question are fully collated in notes to 33 Am. Dec. 661; 31 Am. St. Rep. 294.

MANDAMUS AGAINST OFFICER—ABATEMENT BY CHANGE OF OFFICER.—Plaintiff brought an action against three certain persons, "loan commissioners of the territory of Arizona," to compel the refunding of certain bonds. Pending the proceedings, there was a complete change in the *personnel* of the commission, and this fact was pleaded as a bar to the issuing of the writ. *Held*, that the action did not thereby abate, and that the writ might issue against the present commission. *Murphy* v. *Utter*, (1902), — U. S. —, 22 Sup. Ct. Rep. 776.

The question when a suit against an individual in his official capacity abates by his retirement from office has been discussed in a number of cases before the supreme court, and a distinction taken between applications for a mandamus against the head of a department or bureau for a personal delinquency, and those against a continuing municipal board where there is a continuing duty and the delinquency is that of the board in its corporate capacity.